

EXHIBIT 21

ORIGINAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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AMERICAN CIVIL LIBERTIES UNION, et al.,
Plaintiffs,

-against-

Case No.
98-CV-5591

ALBERTO R. GONZALES, in his official
capacity as Attorney General of the
United States,

Defendant.

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-- DAILY COPY --

885 Third Avenue
New York, New York

February 16, 2006
9:40 a.m.

DEPOSITION of SEXUAL HEALTH NETWORK, INC.,
one of the Plaintiffs herein, by MITCHELL S.
TEPPER, Ph.D., M.P.H., taken by the Defendant,
pursuant to Order.

ARISTA COURT REPORTING CO.
192 Lexington Avenue
Suite 802
New York, New York 10016
(212) 684-6100

1 M. TEPPER, Ph.D., M.P.H.

2 Q. Have you ever received any
3 complaint from anybody that the material on
4 your web site is harmful to minors?

5 A. No.

6 MR. FINE: Objection to the extent
7 it calls for a legal conclusion.

8 MR. SEALLS: I'm sorry, did you
9 answer that, sir.

10 A. I answered it. No.

11 Q. Have you ever received the threat
12 of a lawsuit from the Federal or any state or
13 any local government concerning the content of
14 your web site?

15 MR. FINE: Objection. Vague and
16 ambiguous.

17 A. I think you already asked, but I'll
18 say once again, not directly, no.

19 Q. I'm going to ask you a couple of
20 questions about the category of the contents on
21 your web site.

22 A. Referring to the categories here?

23 Q. No.

24 A. I'm sorry.

25 Q. Let me pose the question this way:

1 M. TEPPER, Ph.D., M.P.H.

2 statement.

3 A. I think I said I don't know what
4 you meant by social value.

5 Q. I'm not asking if you know what I
6 meant. I'm asking you, Dr. Tepper, do you
7 know?

8 A. I have my opinion of social value.
9 People think that what I do is not socially
10 valuable.

11 Q. What's your opinion on social
12 value?

13 A. My opinion on social value would be
14 something that provides a benefit to society.

15 Q. Does your web site provide social
16 value as you define it to persons under age 17?

17 A. Yes.

18 Q. In the year 2005 what were your
19 annual sales through the web site?

20 A. Of products?

21 Q. Yes.

22 A. Of banners? We talked about
23 banners.

24 Q. Let's talk about products.

25 MR. FINE: Objection. Assumes

1 M. TEPPER, Ph.D., M.P.H.

2 a paragraph No. 2, the very last paragraph on
3 Page 24?

4 A. Yes.

5 Q. I want to read the first sentence
6 first. It reads, "Plaintiffs fear prosecution
7 under COPA for communicating, sending
8 displaying or distributing material that might
9 be deemed harmful to "minors" by some community
10 in the United States." Do you see that?

11 A. Yes.

12 Q. Which community or communities does
13 that sentence refer?

14 MR. FINE: Objection to the extent
15 it calls for a legal conclusion. To the
16 extent it calls for speculation, and I'm
17 going to instruct you not to answer to
18 the extent it requires you to reveal any
19 attorney/client communication, but you
20 can answer if you have any independent
21 basis.

22 A. The reason it's some communities
23 because I don't know which community.

24 Q. What, then, is the basis for your
25 assertion in that sentence that I just read?

1 M. TEPPER, Ph.D., M.P.H.

2 A. My basis my assertion for this is
3 as a sexologist and as a sexuality educator and
4 as a member of those professional organizations
5 that I mentioned, that there are on the records
6 government policies regarding sexuality on
7 education, they call it for children, and if
8 you accept money under these abstinence only
9 dollars, I don't know what the title it's
10 attached to, but the official government stance
11 on educating minors is when you accept money as
12 a high school to do sexuality education from a
13 certain pot of funds, that the government sets
14 aside, there are many prongs that are there,
15 and there are a number of things that you
16 cannot talk about like condoms and like
17 masturbation, abortion.

18 So, based on the stances that the
19 government has taken towards what someone who
20 receives funds from the government can and
21 cannot say to minors in a classroom, that's a
22 big strong part of it. Is that there are in
23 place money, money talks, and the money says if
24 you take my money from the government, you
25 cannot mention X, Y and Z, and I would just

1 M. TEPPER, Ph.D., M.P.H.

2 have to say I'd have to go to the document to
3 go through that list, but that list is quite
4 restrictive, what you can say if you accept the
5 government's money.

6 So that the government's policy is
7 abstinence only until marriage and so. Also, I
8 mean, even going away from minors, if I make
9 the assumption that if college professors in
10 universities are being challenged by students
11 who are paying to be in their class, and
12 professors are being threatened with being
13 fired, schools are being threatened for pulling
14 out all of their funding for giving basic
15 sexuality education to adults, if that same
16 information is available to minors, then I'd be
17 at greater risk than a college professor.

18 I can't state you each case, but I
19 know there have been college professors who
20 have been challenged by their students for
21 giving sexuality education, and those things
22 have caused great, great harm, you know, to the
23 professors and to, you know, great, great
24 problems for the schools for adults.

25 So, we have we have a government

1 M. TEPPER, Ph.D., M.P.H.
2 policy that limits what we can say to children
3 if we accept government money, and we have
4 adults who are voluntarily coming to a program
5 suing their professors and those things going
6 very far. So, if those things can happen to
7 sexuality educators and those things are
8 restricted by the government in the school,
9 then I am certainly at risk here when we put on
10 a prong with respect to minors because people's
11 ideas of what's appropriate, what's not
12 appropriate when it comes to sexuality with
13 respect to minors I am very afraid of. I'm
14 very concerned about that.

15 Q. Dr. Tepper, did I understand you
16 correctly when you talked about requirements
17 for certain funding from the government?

18 A. Yes, abstinence only funding.

19 Q. As well as probable professional
20 harm to educators?

21 A. Correct.

22 Q. That you said these things are a
23 big, strong part of your fear of prosecution?

24 A. Yes.

25 Q. What other parts are there that you

1 M. TEPPER, Ph.D., M.P.H.

2 fear prosecution for?

3 A. Well, I mean by nature my web site
4 is sexually explicit and we answer people's
5 questions, so sometimes the questions
6 themselves are sexually explicit and the
7 answers are sexually explicit, and, you know, I
8 think that some adults and I would say many
9 adults, and I don't have documents, believe
10 that obviously the government believes that
11 children should be shielded from sexually
12 explicit material and content, and that goes as
13 far as adults thinking it's inappropriate for
14 your minor child to use the word penis and
15 clitoris and vulva. That's how far it goes.

16 That people think it's
17 inappropriate and abusive for you to teach your
18 child the name of their sexual anatomy and
19 reproductive anatomy. You're touching on very
20 sensitive issues here because I really am
21 concerned about how people perceive what's of
22 value to minors or what's harmful to minors.

23 Q. Are you finished?

24 A. Yes.

25 Q. Are there any other parts, to use

1 M. TEPPER, Ph.D., M.P.H.

2 your word, of your fear of prosecution under
3 COPA?

4 A. So, we have we already talked about
5 government policies, the government act of
6 purging information that they did not want to
7 promote on the CDC web site. I don't know if
8 you've heard of that, but they went through the
9 Center For Disease Control web site and they
10 took off information that was peer reviewed
11 literature related to I believe abortion and
12 condoms, and then there was a big advocacy push
13 so they put some of their content back on.

14 So, once again another government
15 site, the CDC, which is supposed to be academic
16 and free from political influence had or did,
17 it's a fact, you could go find it, I can't
18 state it, did go through and "clean up or edit"
19 their web site of things that were not in line
20 with the government policy of sexuality, and
21 that through advocacy people had gotten
22 information back on the web site, and you can
23 go, there is a history. So, that's another
24 example. You want another example?

25 Q. All examples that you have of the

1 M. TEPPER, Ph.D., M.P.H.

2 parts of your fear of prosecution.

3 A. I'm an advisor to the former
4 surgeon general, Dr. David Satcher. As the
5 surgeon general he put out the call to action
6 for sexual health and responsible sexual
7 behavior which the head of Health and Human
8 Services didn't sign because it didn't say that
9 people should be abstinent until married and it
10 did say that condoms were effective, and so
11 that wasn't signed off by Dr. Satcher's
12 immediate boss, and the administration
13 distanced itself from that, and once again
14 we're talking about sexuality education and
15 accurate information.

16 So, those are many prongs which put
17 up my defensive shields and makes me feel
18 threatened.

19 Q. I'd like to draw your attention to
20 Page 25 of the Amended Complaint.

21 A. I'm sorry I was long-winded.

22 Q. Specifically Paragraph 5 on Page
23 25, and I'm going to read in the interest of
24 time only the first sentence.

25 A. Okay.